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EXAMINER	
OLSON, ERIC	

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Detailed Action

This action is in response to Applicant's submission February 3, 2009 After Final.

7. Applicant's amendment, submitted February 3, 2009, has been entered as it introduces only grammatical changes that do not affect the scope of the claims.

11. Applicant's request for reconsideration submitted February 3, 2009, has been fully considered and not found to be persuasive for reasons of record in the previous office action, and as described below.

Applicant argues that Moreau does not explicitly disclose a reductively aminated pneumococcus type 5 capsular polysaccharide. However as described in the previous office action, column 6 lines 44-65 recite preferred reducing agents borohydride and cyanoborohydride, along with a list of polysaccharides to be reductively aminated including *Streptococcus pneumoniae* type 5 capsular polysaccharide. One skilled in the art would have at once envisaged using any of the **preferred** reducing agents borohydride or cyanoborohydride to aminate the recited polysaccharides. Note that cyanoborohydride is recited in the first paragraph of p. 4 of the instant specification as a preferred reducing agent for making the claimed reductively aminated polysaccharides. Furthermore this line of reasoning certainly does not apply to the rejection of the same claims under 35 USC 103 for being obvious over Moreau et al. as one of ordinary skill in the art would have easily chosen specific combinations of reducing agent and polysaccharide to use in practicing the invention.

Applicant further speculates that the products of Moreau et al. might contain compound X. Specifically, Applicant claims that, contrary to the aforementioned statements in Applicant's own specification, that the critical factor for determining whether compound X is formed is the pH of the reaction medium, with higher pH values producing byproducts. The only reaction conditions known to produce compound X are borohydride reductions of 4 hours or longer. There is no reason to believe that higher pH under microwave irradiation for a period of 15 minutes to 4 hours will produce an unidentified contaminant referred to as compound X. Applicant cannot render a composition patentable over an identical composition in the prior art simply by coming up with a contaminant which could theoretically be present in the prior art. Applicant has demonstrated two sets of conditions, conventional conditions of reaction for 4 or more hours in the absence of microwave radiation, that produces compound X, and Applicant's conditions of reaction for 2-4 hours at lower pH in the absence of microwave irradiation, that does not produce compound X. The method of Moreau differs from both of these methods in that it uses a shorter reaction time and is accelerated by microwave irradiation. Its only similarity to the conventional conditions is the pH, and there is no particular reason to believe that pH is the critical factor, especially since the **only** factor specifically mentioned in Applicant's specification as affecting the presence of compound X is reaction time, as described in the previous office action.

Also, according to column 4 lines 4-13 of Moreau, pH values as low as 5 or 6 are included in the reaction conditions of Moreau. Therefore this argument certainly dos not overcome the rejection presented under 35 USC 103 in the previous office action, as it

would be obvious to one of ordinary skill in the art to select a particular subset of the pH range described by the prior art to use in the invention.

For these reasons the rejections of record in the previous office action are maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC S. OLSON whose telephone number is (571)272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Eric S Olson/
Examiner, Art Unit 1623
2/17/2009

/Shaojia Anna Jiang/
Supervisory Patent Examiner, Art Unit 1623